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No. 95-1398

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1995

TERRY ALSBERG dba ALSBERG BROTHERS BOATWORKS,

Petitioner,

vs.

JEROME E. ROBERTSON, Chapter 7 Trustee of the Bankruptcy Estate of TERRY ALSBERG dba ALSBERG BROTHERS BOATWORKS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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33 pp

QUESTION PRESENTED

Under the California homestead exemption statute, is a debtor under the Bankruptcy Code entitled to exempt a monetary interest in a homestead greater than the amount allowed by the state law?

LIST OF PARTIES

Jerome E. Robertson, as Trustee and Respondent, does not disagree with the list of parties set forth in the petition for writ of certiorari submitted by the petitioner.

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STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 522(a) (Reproduced in Petition)

11 U.S.C. § 522(b) (Reproduced in Petition)

11 U.S.C. § 724(b)

26 U.S.C. § 6321

California Code of Civil Procedure § 703.130 (West 1984)

California Code of Civil Procedure § 703.140(a) (West 1984)

California Code of Civil Procedure § 704.730(a)(2) (West 1986)

STATEMENT OF THE CASE

This case begins and ends with the interpretation of the homestead exemption statutes of the State of California. The law of no other state or circuit is applicable in this case; the Court has previously denied certiorari on the issue presented.

The petition before this Court involves the effect in bankruptcy of California's generous homestead exemption statutes; it does not involve questions of national significance or conflicts among the circuits or states. The issue is a matter governed by California law.

Most simply stated, the question for this Court is whether Mr. Alsberg's late claim of exemption of $45,000 (the amount allowed by the California statute) in his homestead actually entitled him to all of the over $100,000 in cash proceeds of the sale of the residence.

The Bankruptcy Code (Title 11 of the United States Code) provides that an individual debtor may claim that certain property interests are "exempt" from bankruptcy, *i.e.*, the debtor may retain those interests despite the bankruptcy. Bankruptcy Code Section 522(b)(1) provides that the states may (1) authorize debtors filing for bankruptcy protection to select the federal exemption scheme set forth in Section 522(d), or (2) "opt out" of the federal exemption scheme and require debtors within its boundaries to look to the exemptions provided by state law. The exemptions provided under the state law may be more or less generous than the federal exemptions provided by the Bankruptcy Code itself; California, for example, provides a homestead exemption that is far more generous that the homestead exemption provided by the Bankruptcy Code.

By enacting Section 703.130 of the California Code of Civil Procedure ("CCP"), California elected to "opt out" of the federal exemption scheme. In enacting CCP Section 703.140(a), California provided that debtors in bankruptcy may elect (1) the exemptions provided throughout the CCP (such as the $45,000 homestead exemption provided by CCP Section 704.730(a)), or (2) a set of exemptions specified in CCP Section 703.140 that mirrors the federal exemptions.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Alsberg's recitation of the facts and statement of the case are incomplete. Therefore, Respondent restates the facts, largely paraphrasing the Ninth Circuit's recitation of facts in the opinion below. (Alsberg's reproduction of the Ninth Circuit's opinion omitted part of the factual summary; the complete opinion is reprinted in the Appendix to this brief.)

Mr. Alsberg filed a petition for reorganization under Chapter 11 of the Bankruptcy Code on May 29, 1987. At that

time, he owned and occupied a residence in Santa Cruz, California, but he did not claim a homestead exemption in it. At the time of filing, the residence was encumbered by a promissory note secured by a deed of trust for $225,000 (the "mortgage"), federal tax liens of approximately $80,000, and local tax liens of approximately $6,000. In the proceeding below, the Bankruptcy Court determined that the residence was worth $259,000 at the time of filing. When Alsberg filed his Chapter 11 petition, he could have claimed a homestead exemption of $45,000 in the residence under the version of CCP Section 704.730(a)(2) in effect at the time of filing, but he did not do so.

On February 4, 1988, Alsberg filed Amended Bankruptcy Schedules A and B; these schedules are used for disclosure of debts, assets, and exemptions. Alsberg did not claim a homestead exemption at that time. In August 1988, while Alsberg was still a Chapter 11 debtor-in-possession and in control of the bankruptcy case, he entered into an agreement to sell the residence for $380,000 and moved the Bankruptcy Court for approval of the sale. On September 28, 1988, the Bankruptcy Court held a hearing on Alsberg's sale motion. Heard the same day was a motion by certain creditors to convert the case to a Chapter 7 proceeding. The court converted the case to a Chapter 7 liquidation and ordered the motion for approval of the sale held in abeyance pending review by the newly-appointed trustee, Jerome Robertson, the Respondent. The Respondent determined that the terms of the sale were adequate but that Alsberg's motion was defective. Accordingly, the Respondent filed his own motion for approval of the sale free and clear of liens. The motion was granted on October 28, 1988; escrow closed on November 1, 1988. The proceeds of sale amounted to approximately $115,000 after payment of the mortgage and applicable costs of sale.

On January 24, 1989 (*i.e.*, approximately three months after

the sale had closed), Alsberg filed a schedule of exemptions (known as Schedule B-4) along with other amended and supplemental schedules, claiming for the first time a homestead exemption of $45,000, the maximum amount permitted by the California statute. At that time, the residence had already been sold and only the cash proceeds of sale existed.

In October 1991, Alsberg moved the Court for an order under 11 U.S.C. § 554 compelling the Respondent to abandon all of the proceeds of sale (*i.e.*, $115,000) to him, arguing that the bankruptcy estate was not entitled to any proceeds of sale. Alsberg asserted that he personally should receive all proceeds of sale including the post-petition appreciation in the value of the residence. Alsberg argued that the combination of the mortgage of $225,125 plus the homestead exemption of $45,000 exceeded the value of the residence at the time of filing ($259,000), and that his post-sale exemption claim had retroactively removed the residence itself from the bankruptcy estate on May 29, 1987, the date he filed the Chapter 11 petition. In his motion, Alsberg ignored the existence of the tax liens (against which a homestead exemption is not effective). The mortgage and tax liens at the time of filing totalled approximately $311,000, leaving Alsberg with no equity at the filing date. The bankruptcy estate, however, had and maintained an interest in the property by virtue of Bankruptcy Code Section 724(b) which automatically subordinates tax liens to certain priority claims against the bankruptcy estate.

The Bankruptcy Court determined under existing Ninth Circuit authority that (1) Alsberg was entitled to a $45,000 homestead exemption; (2) the property was worth $259,000 at the time of the filing; (3) the tax liens were irrelevant to a determination of the amount allowable as a homestead exemption; and (4) the estate was entitled to any appreciation in the value of the residence between the time of the filing and the

time of sale over and above the amount of the homestead exemption allowed under California law. The Bankruptcy Court further found that the bankruptcy estate had an interest in the residence when Alsberg filed bankruptcy and maintained that interest through the time of sale.

The Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals affirmed the Bankruptcy Court's ruling, holding that the bankruptcy estate was entitled to all post-petition appreciation in the property, but that Alsberg was entitled to $45,000 of the sale proceeds as his homestead exemption.

The Ninth Circuit Court of Appeals affirmed the Bankruptcy Appellate Panel, holding that the case was controlled by the rule enunciated in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992).

REASONS FOR DENYING THE WRIT

I.

THIS COURT HAS RECENTLY DENIED PETITIONS IN CASES INVOLVING THE SAME CALIFORNIA STATUTE.

This Court has recently denied two petitions for writs of certiorari filed in cases decided by the Ninth Circuit on the homestead exemption statute that is the subject of the present petition. *Seror v. Kahan (In re Kahan)*, 28 F.3d 79 (9th Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1100, 130 L. Ed. 1067 (1995); *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1029 (9th Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1695, 131 L. Ed. 559 (1995).

There is nothing to distinguish the present petition from those that have been denied.

II.

THERE IS NO CONFLICT OF AUTHORITY.

The Petitioner has attempted to manufacture an argument that the Ninth Circuit's decision in this case conflicts with decisions of this Court, other circuits, and even the Ninth Circuit itself. There is no such conflict. The Ninth Circuit's decision below is consistent with the decision in *In re Hyman* cited by the Ninth Circuit as controlling and also several other Ninth Circuit cases dealing with the California homestead exemption statute. Those decisions are cited later in this Opposition Brief. The decisions uniformly hold that the "homestead exemption" provided by California law is a fixed dollar amount generated from the sale of the homestead and that debtors in bankruptcy are not entitled to keep post-petition appreciation beyond the fixed dollar amount allowed by law.

In order to manufacture conflicts of authority, Petitioner mischaracterizes the issues and arguments considered by the three courts below. The decisions rendered thus far in this case are based on the California homestead law alone.

The Respondent strongly disagrees with the Petitioner's characterization of the "essential question" presented in this case and his recitation of the issues involved. The Petitioner asserts that the "essential question" is the relationship between Bankruptcy Code Section 522(a) (a definitional provision that states that "value" as used in Section 522 means fair market value on the date the petition was filed) and Section 522(b) which permits a debtor to claim certain exemptions as provided by, in this case, California law.

Although the Respondent finds it difficult to follow Petitioner's argument, it appears that Petitioner is arguing that

the principle of "cleavage" (*i.e.*, that the petition filing date determines the rights of all parties regarding property and its value) as enunciated in cases such as *White v. Stamp*, 266 U.S. 310, 313 (1924) and *Myers v. Matley*, 310 U.S. 622, 628 (1943) requires the Court to conclude that the Petitioner retroactively removed the residence itself from the bankruptcy estate after it was sold because its value at the petition date was insufficient to satisfy both the mortgage ($225,000) and the $45,000 homestead exemption. Once again the Petitioner ignores the tax liens ($86,000) which render the homestead exemption valueless as of the petition date because there was no "equity" to which the homestead exemption could attach. He also ignores California law which governs substantive issues regarding claimed homestead exemptions. *In re Moffat*, 107 B.R. 255, 258 (Bankr. C.D. Cal. 1989), *aff'd*, 119 B.R. 201 (9th Cir. BAP 1990), *aff'd*, 959 F.2d 740 (9th Cir. 1992).

The Petitioner also ignores the federal law regarding exemptions and federal tax liens. Section 6321 of the Internal Revenue Code (26 U.S.C. § 6321) creates a lien for unpaid taxes in favor of the United States upon "all property and rights to property" of the debtor. *In re Raihl*, 152 B.R. 613, 617 (9th Cir. BAP 1993). A state homestead exemption is ineffective against a federal tax lien. *United States v. Heffron*, 156 F.2d 657 (9th Cir. 1947).

If one follows the Petitioner's reasoning that the value of his exemption was fixed at the petition date, one must conclude that he is entitled to no homestead exemption at all because of the lack of any equity due to the mortgage and tax liens. Under his own reasoning, granting him an exemption of any kind would be legally unjustified.

The question at issue, however, is not the effect of "cleavage" but whether under California law a debtor can

exempt more than the law allows. There is no conflict on this issue. The decisions in the Ninth Circuit on the California statute have been consistent and clear: a debtor can only exempt the dollar amount allowed by the statute; he or she is not entitled to exempt the homestead itself or to reap a windfall of post-petition appreciation beyond the allowed exemption amount to the detriment of his or her creditors. The issue is settled in California, and this Court has denied certiorari on two recent cases addressing the issue as noted in Section I above.

In the opinion below, the Ninth Circuit cited *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992), as controlling and noted that the issue argued in the present case is closed. In a footnote in the opinion below, the Ninth Circuit referred to its earlier opinion in *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1028, 1030 n.2 (9th Cir. 1994), *cert. denied*, __ U.S. __, 115 S. Ct. 1695, 131 L. Ed. 559 (1995), for the statement that the "argument that a homestead exemption operates to remove the residence itself from the bankruptcy estate 'is now deemed foreclosed in this circuit.' " *Alsberg*, 68 F.3d 312, 314-15 n.2 (9th Cir. 1995). The Ninth Circuit further explained that "(a)ll the cases in which we have considered this argument have relied upon provisions of California statutory homestead exemption. We have yet to consider this argument as applied to the homestead exemption statutes of other states in this circuit." *Alsberg*, 68 F.3d at 314-15 n.2.

The Ninth Circuit could also have cited *Seror v. Kahan (In re Kahan)*, 28 F.3d 79 (9th Cir. 1994), *cert. denied*, __ U.S. __, 115 S. Ct. 1100, 130 L. Ed. 1067 (1995), and *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317 (9th Cir. 1991), both of which stand for the proposition that a claim of exemption under the California statute exempts a dollar value in the homestead not the homestead itself. "As we noted in *Reed*, Cal. Civ. Proc. Code § 704.730 merely gives debtors the right to a specified amount

of money after a forced sale; it does not give debtors 'an absolute right to retain the homestead itself.' " *Bernard*, 40 F.3d at 1030 n.2.

The *Bernard* panel stated that this line of argument is deemed foreclosed in the Ninth Circuit and referred the reader to Rule 38 of the Federal Rules of Appellate Procedure and Rule 9011 of the Federal Rules of Bankruptcy Procedure, both of which provide for sanctions for, among other things, frivolous pleadings and arguments.

Despite this admonition, the Petitioner asserts that the issue is not settled and argues that there is in fact a conflict within the Ninth Circuit itself. As evidence of a conflict, the Petitioner cites the Ninth Circuit's vacated opinion in *Rigby v. Hall (In re Hall)*, 1 F.3d. 853 (9th Cir. 1993), *vacated*, 41 F.3d 502, *superseded* 42 F.3d 1399 (9th Cir. 1994). *Hall* was based on the Washington homestead statute. The Petitioner's statement that "the appearance of conflict [within the circuit on this issue] caused the decision in *In re Hall*, 1 F.3d (9th Cir. 1993) . . . to be withdrawn" is, to the best of the Respondent's knowledge, unsupported by anything in the record. There is nothing in the order vacating the opinion that indicates a reason for its having been vacated. Respondent does not recall anything stated by the Panel at oral argument indicating the basis for vacating *Hall*. Regardless of the reason for vacating *Hall* the *Hall* decision was based on a Washington homestead statute, not a California statute. Even if *Hall* were still viable authority, there would be no real conflict because its subject was the law of a different state from that considered in the other Ninth Circuit opinions and in this case. The Petitioner cites no conflict within the Ninth Circuit on interpretation of the California statute; there is none.

III.

THE 1993 AMENDMENT OF THE CALIFORNIA STATUTE IS IRRELEVANT.

The Petitioner attempts to argue that the court should interpret CCP § 703.140 as amended by the California legislature in 1993. The Respondent asserts that the changes made in the statute in 1993 are irrelevant to the dispute before this Court and that the statute in effect in 1987 when Alsberg filed his bankruptcy petition is the proper statute to apply. The 1993 amendments to CCP § 703.140 were designed specifically to address the ruling in *In re Pladson*, 154 B.R. 305 (N.D. Cal. 1993), *rev'd*, 35 F.3d 462 (9th Cir. 1994) in which the district court held that homestead exemptions were not available at all to a debtor in bankruptcy. The *Pladson* decision was based on certain language in the statute that was construed to mean that exemptions were available exclusively in the context of execution of judgments. The California legislature, in effect, reversed that ruling by stating that California law had always provided for a homestead exemption in the bankruptcy context.

The Respondent is not disputing that homestead exemptions are available in bankruptcy. However, the change in statute is irrelevant to this case.

CONCLUSION

This case involves an individual debtor in a unique factual situation who has attempted to remove from a bankruptcy estate more than the California homestead exemption statutes allow. The Court has already denied certiorari in cases raising this issue of state law. This petition should also be denied.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DECIDED OCTOBER 11, 1995

In re Terry ALSBERG, dba Alsberg Brothers Boatworks, Debtor.

Terry ALSBERG, dba Alsberg Brothers Boatworks, Appellant,

v.

Jerome E. ROBERTSON, Chapter 7 Trustee, Appellee.

No. 94-15085.
BAP No. NC-92-2318-JAsO.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Sept. 11, 1995.

Decided Oct. 11, 1995.

* * *

Henry G. Rendler, San Jose, CA, for appellant.

Charles P. Maher, Rosenblum, Parish & Isaacs, San Francisco, CA, for appellee.

Appeal from the Bankruptcy Appellate Panel for the Ninth Circuit.

Appendix A

Before: BEEZER and THOMPSON, Circuit Judges, and JUSTIN L. QUACKENBUSH, District Judge.*

BEEZER, Circuit Judge.

Debtor Terry Alsberg, dba Alsberg Brothers Boatworks, ("Alsberg") appeals the Bankruptcy Appellate Panel's ("the BAP") decision that Alsberg is entitled only to the $45,000 homestead exemption allowed under California law from proceeds from the sale of his residence. Alsberg argued to the BAP that he was additionally entitled to the value of post-bankruptcy-petition appreciation in the value of his residence. The BAP held that such appreciation accrued to the bankruptcy estate.

The BAP had jurisdiction pursuant to 28 U.S.C. § 158(b), and we have jurisdiction pursuant to 28 U.S.C. §§ 158(c) and (d). We affirm.

I

Alsberg filed for Chapter 11 bankruptcy on May 29, 1987. At that time he owned and occupied a residence in Santa Cruz, California ("the residence"). As determined by the bankruptcy court and the BAP, the residence was worth $259,000 at the time of filing. At the time of filing, the residence was encumbered by a promissory note secured by a deed of trust for $225,125 ("the mortgage") and tax liens totalling approximately $86,000.[1]

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* The Honorable Justin L. Quackenbush, Senior United States District Judge for the Eastern District of Washington, sitting by designation.

1. The trustee, Jerome Robertson, asserts that the tax liens may operate to

(Cont'd)

Appendix A

Under the versions of 11 U.S.C. § 522(b)(2)(A) and California Code of Civil Procedure § 704.730(a)(2) in effect at the time of filing, Alsberg was entitled to claim a homestead exemption of $45,000 on the residence.

On February 4, 1988, Alsberg filed amended Schedules A and B. The amended schedules of February 4, 1988 do not include a schedule B-4, the schedule for claiming exemptions.

In August 1988, Alsberg entered into an agreement to sell the residence for $380,000 and moved for court approval of the sale. On September 28, 1988, the bankruptcy court heard Alsberg's motion concurrently with a motion to convert the case to a Chapter 7 bankruptcy. The court converted the case to Chapter 7 and ordered the motion for approval of sale held in abeyance pending review by the trustee, Jerome Robertson ("Robertson"). Robertson determined that the sale should go forward, but that Alsberg's motion was defective. Accordingly, Robertson moved for approval of the sale. The motion was granted on October 28, 1988 and escrow closed on November 1, 1988. The proceeds of the sale amounted to approximately $115,000, after payment of the mortgage, applicable costs of sale and capital gains tax.

On January 24, 1989, Alsberg filed an Amended B-4 schedule, along with other amended and supplemental schedules. In the January 24, 1989, B-4 Schedule, for the first

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impair Alsberg's right to a $45,000 homestead exemption. We do not consider the issues raised by the existence of the tax liens, because the parties agreed at a hearing before the bankruptcy court to reserve the question of the rights of the IRS, the County of Santa Cruz, and wage claimants.

time, Alsberg claimed a homestead exemption of $45,000. Only the proceeds of the sale of the residence existed at this time.

In October 1991, Alsberg moved to compel Robertson to abandon the proceeds of the sale, arguing that because the amount owed on the mortgage ($225,125), plus the homestead exemption ($45,000), exceeded the value of the residence at the time of filing ($259,000), the residence was effectively removed from the bankruptcy estate at the time of filing. Accordingly, Alsberg concluded that the estate was not entitled to any of the proceeds of the sale, and instead, he should receive them. The bankruptcy court determined that (1) Alsberg was entitled to a homestead exemption of $45,000; (2) the property was worth $259,000 at the time of filing; (3) the tax liens were irrelevant to a determination of the amount allowable as a homestead exemption; and (4) because the estate had an interest in the residence when Alsberg filed bankruptcy, and maintained that interest through the time of sale, the estate was entitled to any appreciation in the value of the residence between the time of filing and the time of sale.

Both Alsberg and Robertson appealed to the BAP. The BAP affirmed, holding that the estate was entitled to all post-bankruptcy-petition appreciation in the property, but that Alsberg was entitled to $45;000 of the sale proceeds as his homestead exemption.

Alsberg timely appeals.

II

We review de novo decisions of the BAP. *Steelcase Inc. v. Johnston (In re Johnston)*, 21 F.3d 323, 326 (9th Cir. 1994). We

review, as does the BAP, the bankruptcy court's conclusions of law de novo and its findings of fact under the clearly erroneous standard. *Id.*

III

Under the Bankruptcy Code, 11 U.S.C. § 522(b)(2)(A), a debtor may claim a homestead exemption for his residence, and the amount of the exemption may be determined by state law. California Code of Civil Procedure § 704.730(a)(2) sets the amount at $45,000 for debtor-homeowners in Alsberg's circumstances.

Alsberg argues that an aggregate $33,875 interest in the residence became the property of the bankruptcy estate on the date of filing the bankruptcy petition. This sum represents $259,000 market value at the time the petition was filed, less a note for $225,125 secured by a deed of trust. He contends that the $45,000 homestead exemption was effective, apparently automatically, immediately after filing. Alsberg also contends that the homestead exemption operated to move the $33,875 interest out of the bankruptcy estate, leaving the estate with no interest in the residence after the date of filing the bankruptcy petition. Alsberg concludes that because the estate had no interest in the residence after the date of filing the bankruptcy petition, the estate is not entitled to post-bankruptcy-petition appreciation.

This case is controlled by the rule enunciated in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992).[2] Alsberg

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2. We recently stated in *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1028, 1030 n. 2 (9th Cir. 1994) that the argument that a homestead exemption operates

(Cont'd)

relies heavily on *Rigby v. Hall (In re Hall)*, 1 F.3d 853 (9th Cir. 1993). That opinion, however, has been withdrawn and vacated, and is no longer controlling precedent, *In re Hall*, 1 F.3d 853 (9th Cir. 1993), *withdrawn and vacated*, 41 F.3d 502 (9th Cir. 1994), *superseded by* 42 F.3d 1399 (9th Cir. 1994).

In *In re Hyman*, the Hymans, residents of California, owned a residence valued at $415,000 at the time of filing the bankruptcy petition. The residence was encumbered by approximately $348,000 in liens, resulting in a net equity of approximately $67,000. The Hymans claimed a $45,000 homestead exemption. The bankruptcy court approved the trustee's motion for permission to sell the Hymans' residence. The Hymans sought declaratory relief, claiming, among other things, that they were entitled to all post-bankruptcy-petition appreciation in their residence. We held:

> [T]he Hymans' claim for appreciation is without merit. The California statute gives the Hymans a $45,000 exemption as of the time of sale, not a $45,000 equity in the property. . . . Only in the bankruptcy context, where an appreciable period of time usually passes between filing of the petition and sale of the property, can the property rise or fall in value. . . . The debtor's right to use the

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to remove the residence itself from the bankruptcy estate "is now deemed foreclosed in this circuit." All the cases in which we have considered this argument have relied upon provisions of the California statutory homestead exemption. We have yet to consider this argument as applied to the homestead exemption statutes of other states in this circuit.

> exemption comes into play not upon the filing of the petition, but only if and when the trustee attempts to sell the property.

In re Hyman, 967 F.2d at 1321.

When the original bankruptcy petition was filed, Alsberg's interest in the residence passed to the bankruptcy estate. Alsberg's California homestead exemption can be realized only from the net proceeds of sale received by the estate. The estate held an interest in the residence at all times after the petition was filed. Therefore, when the residence was sold, the proceeds of the sale vested in the estate. When Alsberg subsequently filed a claim for a $45,000 homestead exemption after the sale of the property, he became entitled to $45,000 of the proceeds, and no more

AFFIRMED.

APPENDIX B — RELEVANT STATUTES

SECTION 724 (11 U.S.C. § 724)

§ 724. Treatment of certain liens.

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed —

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in sections 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), of 507(a)(6) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

(3) third, to the holder of such tax lien, to any extent that such holder's allowed tax claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection;

(4) fourth, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is junior to such tax lien;

(5) fifth, to the holder of such tax lien, to the extent that such holder's allowed claim secured by such tax lien is not paid under paragraph (3) of this subsection; and

(6) sixth, to the estate.

(c) If more than one holder of a claim is entitled to distribution under a particular paragraph of subsection (b) of this section, distribution to such holders under such paragraph shall be in the same order as distribution to such holders would have been other than under this section.

(d) A statutory lien the priority of which is determined in the same manner as the priority of a tax lien under section 6323 of the Internal Revenue Code of 1954 (26 U.S.C. § 6323) shall be treated under subsection (b) of this section the same as if such lien were a tax lien.

INTERNAL REVENUE CODE § 6321

26 U.S.C. § 6321. Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(Aug. 16, 1954, c. 736, 68A Stat. 779.)

CALIFORNIA CODE OF CIVIL PROCEDURE

§ 703.130. Federal bankruptcy exemptions; not authorized

Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11

of the United States Code (Bankruptcy) are not authorized in this state.

(Added by Stats. 1984, c. 218, § 1.5.)

§ 703.140. Federal bankruptcy; applicable exemptions

(a) If a petition is filed under Title 11 of the United States Code, the exemptions provided by this chapter other than the provisions of subdivision (b) of this section shall be applicable, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that

person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seven thousand five hundred dollars ($7,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed one thousand two hundred dollars ($1,200) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed two hundred dollars ($200) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed five hundred dollars ($500) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value four hundred dollars ($400) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars ($750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value four thousand dollars ($4,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed seven thousand five hundred dollars ($7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(Added by Stats. 1984, c. 218, § 2.)

§ 704.730.* Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Thirty thousand dollars ($30,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) Forty-five thousand dollars ($45,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) Sixty thousand dollars ($60,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead either a person 65 years of age or older, or a person physically or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving

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* Applicable on 5/29/97.

disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, or subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

(Added by Stats. 1982, c. 1364, p. 5165, § 2, operative July 1, 1983. Amended by Stats. 1984, c. 454, § 1; Stats. 1986, c. 1000, § 1; Stats. 1986, c. 1001, § 1.)